IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.1005 of 2007
Date of decision:15.11.2007

T.B. Singla & Ors.

…Petitioners

Vs.

State of Punjab and ors.

…Respondents

CORUM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA.

Present: Mr. Puneet Gupta, Advocate
for the petitioner.

Mr. Suvir Sehgal, Addl. Advocate General, Punjab.

Mr. Sanjiv Bansal, Advocate
for respondent Nos.3 and 4.

Adarsh Kumar Goel, J.

This petition seeks quashing of order dated 22.9.2006, Annexure P-5, amending the Voluntary Retirement Scheme (VRS) retrospectively.

Case set out by the petitioners is that they were regular employees of Punjab Tourism Development Corporation Limited. The Department of Disinvestment formulated a VRS scheme, which was notified on 24.2.2003, Annexure P-2. As per para 6 of the Scheme, an employee opting for VRS was entitled to salary of 35 days for every completed year of service and 25 days for every

year of balance of service. The petitioners opted for the scheme and the said option was accepted by the concerned respondent on 2.7.2003, but the petitioners were not relieved on the ground that the Corporation did not have the funds to pay the dues. The petitioners have continued to serve except petitioner No.19 who retired on 31.3.2006. On 22.9.2006 vide Annexure P-5, VRS Scheme has been amended w.e.f. 24.2.2003 providing that employees retained on duty will not be entitled to count service rendered after 2.7.2003 for the purpose of computing Ex-gratia and other benefits.

In the reply filed on behalf of the State, stand taken is that the employment of the petitioners being a loss making concern, decision was taken with a view to lessen the financial burden after expiry of six months from the date of issuance of original notification dated 24.2.2003 in the financial interest of the Public Sector Undertaking.

We have heard learned counsel for the parties.

Learned counsel for the petitioners submitted that since the employees were not relieved, the contract of employment continued and the employees were entitled to terminal benefits as per rules in force and denial of terminal benefits when the VRS Scheme had not come into force, was not permissible. Reliance has been placed on judgment of the Hon'ble Supreme Court in ***Bank of India and others*** *v.* ***O.P. Swarnakar and others*** (2003) 2 SCC 721 (para 63). If the scheme was amended, the option of

the employees did not survive as held in para 90 of the said judgment.

Per contra, learned counsel for the State relied upon judgment of the Hon'ble Supreme Court in ***Vice-Chairman & M.D. A.P. SIDC Ltd. and another*** *v.* ***R. Varaprasad and others*** (2003) 11 SCC 572. In the said case, the employees had exercised their option for VRS. Thereafter, VRS-II was introduced, giving better benefits. It was held that increase in salary after cut off point, could not be taken into account.

Question for consideration is whether the impugned order directing that period spent on duty from the date of Voluntary Retirement Scheme to the date of relieving shall not count for the purpose of computing amount of benefits admissible under the VRS and further provision that even after acceptance of VRS, employees could be relieved from such date as may be approved by the Government, is valid?

We are of the view that the employees who had opted for VRS may be bound by the terms of the VRS, but at the same time, the State could not incorporate new changes which were never accepted by the employees unilaterally. If any changes are to be effected, the employees have to be given fresh option. The judgment of the Hon'ble Supreme Court in ***O.P. Swarnakar*** *(supra)* supports the stand of the petitioners while the judgment in ***R. Varaprasad*** *(supra)* relied upon on behalf of the State, is distinguishable. Therein, the employees had claimed beneficial provisions of VRS-II, for which, they were held not to be entitled to.

Accordingly, we allow this petition and direct that the order dated 22.9.2006 will not be given effect to unilaterally and if the same is to be operated, fresh option may be sought from the employees.

The petition is disposed of.

(ADARSH KUMAR GOEL)
JUDGE

November 15, 2007 **(AJAI LAMBA)**

ashwani **JUDGE**